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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,062	09/17/2003	Jean-Phillipe Crepeau	RP-01042-US2	3257
909	7590	07/01/2005	EXAMINER	
PILLSBURY WINTHROP SHAW PITTMAN, LLP			ENGLISH, PETER C	
P.O. BOX 10500			ART UNIT	
MCLEAN, VA 22102			PAPER NUMBER	

3616

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/664,062

Applicant(s)

CREPEAU ET AL.

Examiner

Peter C. English

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 20030917.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the rack integrally formed with a fender (claim 34) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

### ***Specification***

2. The specification is objected to because:  
In paragraph 1, at line 3, "2003" should be "2002".  
In paragraph 1, at line 4, the blank should be replaced with "10/657,080".  
Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. Claim 34 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The specification fails to provide an adequate written description of a rack integrally formed with a fender. The rack described in detail in the specification is secured to a fender and a support by a fastener. It is unclear from the specification how the disclosed a rack assembly would need to be modified in order to be integrally formed with the fender.

4. Claims 19, 22, 26 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 19, at line 2, "the top" lacks proper antecedent basis.

In claim 22, at lines 2-3 and 3-4, “one of either the fender or the support” renders the claim indefinite because this alternative recitation appears to define the invention more broadly than previous claim 21, which defines the rack as “attached to the support”.

In claim 26, at line 2, “the fender” lacks proper antecedent basis.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 7-10 and 12-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Kitao et al. (US 6,296,163). Kitao et al. discloses an ATV having a rack 8 made of molded plastic (see column 7, lines 21-22). The rack 8 has circular recesses 63 that receive fasteners 67 for securing the rack 8 to a support 46. The support 46 is connected to fenders 13 and ATV frame 1 by collars 53 and fasteners 55. The rack 8 includes slots 62, recesses 64 and ribs 8b, 8c, 8d. As shown in Fig. 1, the rack 8 has a center section and opposite side sections. In the embodiment of Fig. 18, the center section 102 is separate from the side sections 103, 103. In the embodiment of Figs. 19-20, a cover 114 is secured to the center section by a hinge 113.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

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claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kitao et al. in view of Spencer et al. (US 5,573,162). Kitao et al. (discussed above) lacks a latch for the hinged cover. Spencer et al. teaches a latch 28 for a hinged cover 50. From this teaching of Spencer et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Kitao et al. by providing a latch for the hinged cover in order to prevent the cover from swinging open (and allowing stored objects to escape) while traversing rough terrain.

10. Claims 1-10, 12-22 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. (US 6,016,943) in view of Kitao et al. (US 6,296,163). Johnson et al. discloses an ATV having a rack 60 made of molded plastic reinforced with glass fibers having a length of "about" ¼ inch (see column 5, lines 37-62). The rack 60 has mounting holes 82 that receive fasteners for securing the rack 60 to an ATV frame. The rack 60 includes slots 70, 84, recesses 80 and ribs 66, 74, 78. As shown in Fig. 2, the rack 60 has a center section and opposite side sections. Johnson et al. lacks a center section that is separate from the side sections and that has a hinged cover.

Kitao et al. teaches an ATV having a rack 8 made of molded plastic (see column 7, lines 21-22). The rack 8 has circular recesses 63 that receive fasteners 67 for securing the rack 8 to a support 46. The support 46 is connected to fenders 13 and ATV frame 1 by collars 53 and fasteners 55. The rack 8 includes slots 62, recesses 64 and ribs 8b, 8c, 8d. As shown in Fig. 1, the rack 8 has a center section and opposite side sections. In the embodiment of Fig. 18, the center section 102 is separate from the side sections 103, 103. In the embodiment of Figs. 19-20, a cover 114 is secured to the center section by a hinge 113. From this teaching of Kitao et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Johnson et al. by forming the center section separate from the side sections because this

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allows the relative positions of the rack sections to be changed to accommodate particular cargo (see Kitao et al., column 12, lines 60-column 13, line 6). Further, it would have been obvious to modify Johnson et al. by providing the center section with a hinged cover, as taught by Kitao et al., in order to more easily carry small objects (see Kitao et al., column 13, lines 25-28).

With respect to claim 6, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Johnson et al. by reducing the length of the glass fibers from “about ¼ inch” to “about ⅛ inch” because shorter fibers are easier to work with (i.e., easier to mix into the plastic resin, with the resulting mixture easier to inject into a mold). It is noted that such a reduction in glass fiber length, with the consequent reduction in strength, is feasible in the Johnson et al. and Kitao et al. combination in light of Kitao et al.’s teaching of a support 46 for the rack 8. Further, the length of the glass fibers is considered to be an obvious matter of design choice since applicant has not disclosed that fibers of “about ⅛ inch” solve any stated problem or are used for any particular purpose and it appears that Johnson et al.’s fibers of “about ¼ inch” would work equally as well. Still further, a modification involving a mere change in length is generally recognized as being within the level of ordinary skill in the art.

11. Claims 11 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. in view of Kitao et al. as applied to claims 1-10, 12-22 and 26 above, and further in view of Spencer et al. (US 5,573,162). The Johnson et al. and Kitao et al. combination lacks a latch for the hinged cover. Spencer et al. teaches a latch 28 for a hinged cover 50. From this teaching of Spencer et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Johnson et al. by providing a latch for the hinged cover in order to prevent the cover from swinging open (and allowing stored objects to escape) while traversing rough terrain.

12. Claims 23-25 and 28-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. (US 6,016,943). Johnson et al. discloses an ATV having a rack 60 made of molded plastic reinforced with glass fibers having a length of “about” ¼ inch (see column 5, lines 37-62). The rack 60 has mounting holes 82 that receive fasteners for securing the rack 60 to an ATV frame. The rack 60 includes slots 70, 84, recesses 80 and ribs 66, 74, 78. As shown in Fig. 2, the

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rack 60 has a center section and opposite side sections. The center section is considered to be a "cover" as broadly claimed since it extends over the front portion of the ATV. Johnson et al.

With respect to claim 23, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Johnson et al. by reducing the length of the glass fibers from "about ¼ inch" to "about ⅛ inch" because shorter fibers are easier to work with (i.e., easier to mix into the plastic resin, with the resulting mixture easier to inject into a mold). Further, the length of the glass fibers is considered to be an obvious matter of design choice since applicant has not disclosed that fibers of "about ⅛ inch" solve any stated problem or are used for any particular purpose and it appears that Johnson et al.'s fibers of "about ¼ inch" would work equally as well. Still further, a modification involving a mere change in length is generally recognized as being within the level of ordinary skill in the art.

13. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. as applied to claims 23-25 and 28-33 above, and further in view of Rondeau et al. (US 6,874,590). Johnson et al. lacks a rack formed integrally with a fender. Rondeau et al. teaches a fender 203 with an integrally formed rack 211, 220, 222. From this teaching of Rondeau et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Johnson et al. by forming the rack integrally with a fender in order provide for easier assembly and manufacture (see Rondeau et al., column 1, line 61-column 2, line 31).

### ***Conclusion***


14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gagnon et al. teaches an ATV with a rack and a hinged cover.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter C. English whose telephone number is 571-272-6671. The examiner can normally be reached on Monday through Thursday (7:00 AM - 5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul N. Dickson can be reached on 571-272-6669. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Peter C. English 6/29/05  
Primary Examiner  
Art Unit 3616

pe  
29 June 2005